

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)	
)	
)	
)	NO. 3:22-cr-00392
v.)	JUDGE RICHARDSON
)	
BENJAMIN T. TOH)	

ORDER

Pending before the Court is Defendant's "Motion to Quash Rule 17 Subpoena Issued to Corenna Allen and Supporting Memorandum of Law" (Doc. No. 53, "Motion"). On August 9, 2023, chambers staff received the following correspondence, via email, from Corenna Allen:

My name is Corenna Allen and I received a subpoena to produce documents in Case 3:22-CR-00392 under Judge Eli Richardson. I am a non-party witness and Pro Se.

I have made every attempt to contact the issuing party in order to comply with the subpoena, however, I have not received any response despite multiple attempts over the last 7 days, as follows:

8/2/2023, 5:56pm ET: Subpoena for documents was sent to my email from OIG HHS Agents Tony Eastman and Tony Maffei.

This was sent after a phone call from the agents at 5:28pm ET on 8/2/2023 where I was informed an FBI agent would be picking up the documents at my house at 9:30am ET Friday morning. I could indicate in my response to the subpoena if that was fine.

8/2/2023, 9:16pm ET: I responded to the email that I had received it but I had some questions about the subpoena and stated the scope was very broad. No response

8/4/2023: A motion to quash the subpoena was filed by the defendant in addition to requesting the court provide counsel on my behalf.

8/4/2023, 5:55pm ET: I was informed the subpoena was still in effect and counsel was denied as I had not mentioned anything about wanting it. I was to contact the issuing parties and reach an agreement in order for me to comply.

8/4/2023, 6:15pm ET: I sent a text message to Taylor Eastman, OIG HHS Agent asking him when would be good time to connect with him and Tony about handing over the documents. No response

8/4/2023, 6:51pm ET: I sent an email to agents Eastman and Maffei stating it was my understanding the subpoena is still in effect and I would like to set up a time to provide documents. I offered to meet in Atlanta and that I understood time was a huge factor in the case and would choose to hand over the documents earlier than the trial start date. No response

8/7/2023, 8:28am ET: I sent an email to Assistant US Attorneys, Sarah Bogni and Robert Levine stating I was making every effort to comply with the subpoena; however I was unclear what documents were being requested and the instructions for submitting them. I stated when I had previously reached out to the OIG agents and had not received any response. I asked for someone to reach out to me that day. I received automatic replies with instructions for contacting their assistants.

8/7/2023, 1:51pm ET: I emailed Assistant US Attorney, Sarah Bogni's assistant, Christine Smith stating I had received the contact information from her automatic reply and could she assist me with the matter relating to the subpoena. No response

8/7/2023, 4:37pm ET: I called the US Attorney's office and explained the situation and they asked for the Attorney's names on the subpoena and took down my contact information and stated she would ask that someone be back in touch with me. No response

8/8/2023, 4:40pm ET: I called the US Attorney's office and a different person answered the phone. I stated I had called the previous day and that I had spoken with a receptionist who had taken my information and still had not received a response. She asked for the attorney's names and transferred me. There was no answer and it was the voicemail of Sarah Bogni. I left a voicemail and asked to receive a response no later than 12pm on Wednesday. No response

This subpoena is not only broad, but has become blatantly oppressive and burdensome. I am unable to personally deliver these documents in court in Nashville at the beginning of trial next week. I live outside Augusta, GA in South Carolina with a full-time job, 2 young children, including one currently in Kindergarten, and multiple personal commitments and obligations.

I have been subpoenaed to testify in this trial by both parties, however the Prosecution has terminated that subpoena. I am still being called by the defense at this time. It is not acceptable for me to drive 818 miles round trip to deliver documents at the start of trial or before and then repeat in the next 2 weeks to deliver testimony.

I am requesting a response from the court on how to proceed with this matter in the most effective way as I have exhausted all of my options. If you are not the correct contact, please point me in the right direction. Thank you for your time.

Based on the Government's comments at the August 4, 2023 pretrial conference, the Court was left with the impression that the Government intended to withdraw its Rule 17 subpoena issued to Corenna Allen. And, after receipt of the above-referenced email from Corenna Allen, the Court is now under the impression that the Government has in fact withdrawn the subpoena, rendering Defendant's Motion moot. Therefore, Defendant's Motion (Doc. No. 53) is hereby **DENIED**.

However, Corenna Allen has advised the Court she is "still being called by the defense at this time," and raised concerns related to her compliance with a subpoena. Given the matters raised by Corenna Allen, Defendant shall advise on or before 2:00 p.m. on August 11, 2023, whether he still intends to (possibly) call Corenna Allen as a witness, and if so, his view as to the extent to which Corenna Allen may be entitled to relief from enforcement of a subpoena due to her reported location and personal circumstances as conveyed via her email.

IT IS SO ORDERED.


ELI RICHARDSON
UNITED STATES DISTRICT JUDGE